

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, : CRIMINAL CASE NUMBER
PLAINTIFF :
VERSUS : 21-CR-088-1
ANTHONY FRANCIS NERO, :
DEFENDANT :

DECEMBER 3, 2021
COURTROOM 15B
PHILADELPHIA, PA 19106

BEFORE THE HONORABLE KAREN S. MARSTON, J.

STATUS HEARING

APPEARANCES:

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ASSISTANT UNITED STATES ATTORNEYS
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PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 CONTINUED APPEARANCES:

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3 509 SWEDE STREET
4 NORRISTOWN, PA 19401

5 COUNSEL FOR THE DEFENDANT

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1 (CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING. I AM CALLING
3 THE CASE OF UNITED STATES VERSUS NERO. IT IS CRIMINAL
4 DOCKET 21-88.

5 WILL COUNSEL PLEASE STATE THEIR NAMES FOR
6 THE RECORD.

7 MR. WOODWARD: GOOD MORNING, YOUR HONOR,
8 TIMOTHY WOODWARD ON BEHALF OF MR. NERO.

9 THE COURT: HELLO. AND MR. NERO, HELLO.

10 MR. GAURI: GOOD MORNING, YOUR HONOR.
11 VINEET GAURI FOR THE GOVERNMENT. WITH ME IS SPECIAL
12 AGENT ROB JONES FROM FBI.

13 THE COURT: ALL RIGHT. THANK YOU BOTH
14 FOR BEING HERE. AND I SEE SOMEBODY ELSE IN THE
15 BACKGROUND TOO. HEY, HOW ARE YOU?

16 THE AGENT: GOOD, THANK YOU.

17 MR. GAURI: WE ARE INTERCHANGABLE, YOUR
18 HONOR, WITH HAIR STYLES.

19 THE COURT: NO, NO, NO, NEVER.

20 I AM HERE BECAUSE I HAVE A LETTER FROM
21 DEFENSE COUNSEL REGARDING THIS ONGOING ISSUE WHICH I
22 WANTED TO ADDRESS ABOUT THE SHU, BECAUSE I THOUGHT THE
23 SHU WAS GOING TO BE 30 DAYS. YOU WERE COMING OUT OF IT
24 IN AUGUST. I KNOW WE HAD ANOTHER LITTLE BUMP IN THE
25 ROAD THEN. BUT WHAT IS GOING ON?

1 MR. WOODWARD: YOUR HONOR, AS FAR AS I
2 KNOW, MR. NERO WAS TOLD, AS WAS HIS FAMILY, THAT HE
3 WOULD BE OUT OF THE SHU ON SEPTEMBER 13TH, AND THAT HAS
4 NOT HAPPENED.

5 THE COURT: AND HE DOES NOT KNOW WHY?

6 MR. WOODWARD: I THINK WHAT HE IS BEING
7 TOLD IS -- AND CERTAINLY HE CAN ADDRESS THAT TOO, IS
8 THAT THEY HAVE TOLD HIM THAT HE IS A DANGER.

9 THE COURT: OKAY. BECAUSE I DON'T KNOW
10 THAT I HAVE ANY REAL AUTHORITY TO DIRECT THEM TO GIVE
11 YOU A SEPARATE ROOM, BECAUSE THAT'S GOING TO REQUIRE
12 THEM TO PULL PERSONAL AND SO FORTH. SO I WANTED TO SEE
13 WHERE WE ARE ON THIS, BECAUSE WE NEED TO GET THIS
14 EVALUATION DONE. WE CAN CERTAINLY GET HIM EVALUATED IN
15 OTHER WAYS, I.E. WITH THE BOP, BUREAU OF PRISONS. SO
16 THAT'S ANOTHER OPTION, I THINK.

17 AM I RIGHT?

18 MR. GAURI: THAT MIGHT BE AN OPTION, YOUR
19 HONOR. I THINK MY UNDERSTANDING FROM TALKING TO MR.
20 WOODWARD BEFORE COURT, YOUR HONOR, IS THAT MR. -- OR DR.
21 DATTILIO WON'T MEET WITH THE DEFENDANT IN THE SHU FOR
22 VARIOUS REASONS TO DO THE EVALUATION. BUT WHAT WE MIGHT
23 BE ABLE TO DO -- AND SOME OF THIS IS COMPLICATED, I
24 THINK, BECAUSE ALICIA GALLAGHER HAS BEEN OUT AT THE FDC,
25 ON LEAVE. I THINK SHE IS BACK IN JANUARY, IS THAT

1 RIGHT?

2 MR. WOODWARD: THAT'S WHAT THE VOICE MAIL
3 SAYS.

4 MR. GAURI: HER AUTO REPLIES ARE GONE,
5 BUT I HAVE NOT HAD ANY REPLIES BACK TO MY E-MAILS ABOUT
6 THIS OR ANOTHER CASE, SO SHE MAY STILL BE ON LEAVE. SO
7 THAT'S BEEN COMPLICATING THINGS A LITTLE BIT, I THINK,
8 IN TERMS OF GETTING, YOU KNOW, A RESPONSE AND SOME MORE
9 GUIDANCE FROM THEM IN TERMS OF WHAT THEY CAN -- HOW THEY
10 CAN ACCOMMODATE MR. WOODWARD AND MR. NERO.

11 SO I DON'T KNOW IF YOUR HONOR HAS THE
12 ABILITY TO ORDER THE FDC TO AT LEAST PROVIDE A SEPARATE
13 ROOM OUTSIDE OF THE SHU TO JUST DO THE EVALUATION AS
14 OPPOSED TO CHANGING HIS ACTUAL ACCOMMODATIONS OUTSIDE OF
15 THE SHU.

16 THE COURT: I KNOW I DON'T HAVE THAT.

17 MR. GAURI: CORRECT, YOUR HONOR. BUT I
18 THINK -- IT MIGHT BE POSSIBLE FOR YOUR HONOR TO TRY TO
19 ORDER THAT TO HELP MR. WOODWARD GET THE DEFENDANT
20 EVALUATED BY DR. DATILIO, AND THEN WE CAN, YOU KNOW, GO
21 FORWARD WITH WHATEVER WE ARE DOING IN THIS CASE, WHETHER
22 IT'S A TRIAL OR IT'S A PLEA.

23 MR. WOODWARD: IT'S A PLEA, YOUR HONOR.

24 THE COURT: WELL, I AM HAPPY TO DO IT,
25 AND WE WILL SEE IF IT WORKS. I GUESS MY -- AND HE IS A

1 PRETRIAL DETAINEE, SO I MAY HAVE A LITTLE BIT MORE
2 AUTHORITY GIVEN THAT NATURE OF IT.

3 HAVE YOU BEEN SUCCESSFUL WITH OTHER
4 JUDGES GIVING SUCH A LETTER?

5 MR. GAURI: I HAVE NOT, YOUR HONOR. THIS
6 IS A UNIQUE CIRCUMSTANCE FOR ME. I CAN CHECK WITH MR.
7 DAVIDSON, ALSO SHAKING HIS HEAD.

8 THE COURT: THAT'S MY -- I HATE TO -- I
9 MEAN, WE WILL SEE IF IT WORKS, I GUESS IS THE BEST I CAN
10 DO.

11 MR. GAURI: RIGHT.

12 THE COURT: BUT THEN I WAS TRYING TO COME
13 UP WITH ANOTHER PLAN. I EVEN THOUGHT ABOUT IN TERMS OF
14 A PROFFER, BUT THAT'S NOT GOING TO WORK BECAUSE THEN
15 SOMEBODY HAS TO STAY IN THE ROOM WITH HIM, BECAUSE HE
16 CANNOT BE IN THE ROOM ALONE WITH THE EVALUATOR. I AM
17 SURE THAT'S PART OF THIS ISSUE.

18 DO YOU KNOW ANYTHING ABOUT HIS SHU
19 STATUS?

20 MR. GAURI: I DON'T, YOUR HONOR. LAST --
21 WHEN MR. WOODWARD CAME OVER TO INSPECT SOME MORE
22 DISCOVERY, A MONTH OR TWO BACK WAS THE LAST TIME I TRIED
23 TO E-MAIL THE FDC, AND I DIDN'T REALLY GET A WHOLE LOT
24 OF LUCK THERE. SO I DON'T HAVE ANY -- NO INFORMATION ON
25 MY SIDE IN TERMS OF WHY HE IS STILL IN THE SHU.

1 THE COURT: WHO IS -- IF ASHLEY GALLAGHER
2 IS OUT, THERE'S GOT TO BE SOMEBODY COVERING FOR HER.

3 MR. GAURI: THEY HAVE AN E-MAIL ADDRESS,
4 YOUR HONOR, SORT OF EXECUTIVE STAFF AT THE FDC AND
5 LEGAL, SO THAT'S WHERE OCCASIONALLY YOU WILL GET REPLIES
6 BACK FROM. I AM ASSUMING IT'S A WARDEN'S STAFF AND
7 MAYBE SOMEONE WHO WORKS FOR MR. GAURI WHO WILL
8 OCCASIONALLY REPLY BACK.

9 THE COURT: CAN'T WE GET SOMEBODY ON THE
10 PHONE?

11 MR. GAURI: WE CAN TRY.

12 THE COURT: LET'S TRY TO GET SOMEBODY ON
13 THE PHONE, AND SAY THAT JUDGE MARSTON IS INQUIRING ABOUT
14 THIS. I WOULD LIKE TO -- AND IT'S -- I WANT TO KNOW
15 WHAT HIS SHU STATUS IS, BECAUSE HE HAS BEEN IN THE SHU
16 NOW -- I MEAN, IS HE IN SOLITARY?

17 THE DEFENDANT: NO, YOUR HONOR.

18 THE COURT: YOU ARE JUST IN A SHU WITH A
19 CELLMATE?

20 THE DEFENDANT: I HAVE BEEN IN THE SHU
21 SINCE JUNE 30TH, ABOUT FIVE MONTHS.

22 THE COURT: YEAH.

23 THE DEFENDANT: ALMOST SIX MONTHS.

24 THE COURT: HAVE YOU HAD ISSUES IN THE
25 SHU?

1 THE DEFENDANT: NO, NOT AT ALL, YOUR
2 HONOR. IN FACT, YESTERDAY I MET WITH PSYCHIATRIST
3 BRICKLY AS PART OF THEIR SIX-MONTH REVIEW. AND EVEN THE
4 ASSISTANT WARDEN SAID THEY ARE TRYING TO GET YOU OUT OF
5 HERE. SO IT COULD HAPPEN IN THE NEXT COUPLE OF WEEKS, I
6 DON'T KNOW FOR SURE BECAUSE THEY DON'T REALLY TELL YOU
7 ANYTHING.

8 THE COURT: RIGHT.

9 MR. WOODWARD: YOUR HONOR, CANDIDLY,
10 THERE IS ANOTHER -- THERE WAS ANOTHER ALLEGED INCIDENT
11 WITHIN THE SHU.

12 THE COURT: THAT WAS A WHILE AGO. THAT'S
13 WHAT KEPT HIM IN -- I THOUGHT THAT WAS THE INCIDENT WE
14 WERE TALKING ABOUT. I MEAN, WE WERE ON THE THIRD TIME
15 HERE, RIGHT, IF I AM REMEMBERING CORRECTLY.

16 MR. WOODWARD: YES. THERE WAS ONE ON
17 JULY THE 14TH AND THEN ONE ON JULY THE 18TH. THAT'S THE
18 TWO INCIDENTS THAT I AM AWARE OF.

19 THE DEFENDANT: JULY 18TH.

20 THE COURT: I JUST RECALL THAT THE FIRST
21 TIME WE HAD THIS ISSUE, HE HAD GONE TO THE SHU, WE
22 THOUGHT HE WAS GOING TO BE OUT IN A DATE IN AUGUST, SO I
23 MOVED IT BASED ON THAT. AND THEN YOU DIDN'T GET OUT.

24 THE DEFENDANT: AND THEN THEY DECIDED TO
25 NOT LET ME OUT.

1 THE COURT: I THOUGHT SOMETHING HAPPENED.

2 THE DEFENDANT: NO. THERE WAS AN ALLEGED
3 INCIDENT WHERE I WAS ALLEGEDLY FIGHTING WITH ANOTHER
4 INMATE, BUT IT WAS A BOGUS INCIDENT WHERE THEY JUST
5 PEPPER SPRAYED ME, AND THEY SAID, DON'T F WITH ME AGAIN
6 FOR THREATENING ONE OF MY CO-WORKERS. IT WAS A
7 RETALIATORY THING, SO I WAS LIKE OKAY, WHATEVER. BUT
8 SINCE THEN, THEY HAVE NEVER REALLY SAID WHY I AM STILL
9 IN THE SHU.

10 THE COURT: AND SINCE THEN YOU DON'T
11 THINK THAT YOU HAD ANY INFRACTIONS?

12 THE DEFENDANT: I KNOW I HAVE NOT, YES.

13 THE COURT: ALL RIGHT. WELL, A, LET'S
14 HOPE THAT MAYBE SINCE HE JUST MET WITH SOMEBODY THAT MAY
15 WORK ITSELF OUT. BUT I THINK WHAT I WOULD LIKE IS FOR
16 THE GOVERNMENT TRY TO GET SOMEBODY ON THE PHONE. I KNOW
17 THAT'S NOT THE EASIEST TASK AT HAND, FROM MY OWN
18 PERSONAL EXPERIENCE, BUT TRY TO GET SOMEBODY, BECAUSE I
19 HAVE TO THINK ALICIA GALLAGHER HAS TO HAVE SOMEBODY THAT
20 IS COVERING FOR HER IF SHE IS NOT IN THIS OFFICE. AND
21 SAY I AM INQUIRING AS TO THE STATUS OF THIS PARTICULAR
22 DEFENDANT, BECAUSE HE HAS BEEN IN THE SHU SINCE JUNE
23 30TH, AND IT'S AFFECTING HIS EVALUATION. AND DEPENDING
24 ON WHAT -- WRITE ME AN E-MAIL, OBVIOUSLY, COPYING THE
25 DEFENSE, AND LET ME KNOW WHAT THE STATUS OF THAT UPDATE

1 IS. AND THEN BASED ON THAT -- AND YOU CAN LET THEM KNOW
2 THE JUDGE IS GOING TO ENTER AN ORDER FOR HIM TO BE SENT
3 TO A SEPARATE ROOM FOR THIS EVALUATION, AS LONG AS HE IS
4 IN THE SHU.

5 MR. GAURI: WILL DO, YOUR HONOR.

6 THE COURT: IS THE DOCTOR -- I MEAN, WILL
7 THE DOCTOR SQUEEZE HIM IN?

8 MR. WOODWARD: YES, HE WILL. EVEN IF HE
9 HAS TO DO IT ON A SATURDAY, HE TOLD ME HE WILL FIT HIM
10 IN.

11 THE COURT: OKAY.

12 MR. WOODWARD: AND JUDGE, I DIDN'T KNOW
13 WHERE ELSE TO TURN OR WHO ELSE TO TURN TO. I DO VERY
14 LITTLE, IF ANY, FEDERAL WORK. I CAN TESTIFY TO YOU, IT
15 IS ROUTINE IN THE COUNTIES FOR THE JUDGE TO ISSUE AN
16 ORDER. IN FACT, THE PRISON WILL SAY, GIVE ME AN ORDER
17 AND WE WILL GIVE YOU A SEPARATE ROOM. AND THAT HAS
18 HAPPENED WITH THE MURDERS IN THE HOLE WHERE THEY WILL
19 GIVE YOU A SEPARATE, SECURE ROOM FOR THAT DETAINEE.
20 THAT'S WHY I WROTE THE LETTER TO YOU, BECAUSE I WAS AT
21 WIT'S END.

22 THE COURT: I AM HAPPY TO HAVE THIS
23 CORRESPONDENCE, I AM GLAD I GOT THE CORRESPONDENCE
24 BECAUSE I WOULD LIKE TO KNOW THAT THIS HAS NOT HAPPENED.
25 BUT I ALSO KNOW FROM MY LIFE BEFORE HERE THAT THAT ORDER

1 -- I CAN ISSUE THAT ORDER, AND IT MAY OR MAY NOT BE --

2 MR. WOODWARD: I WAS AWARE OF THAT ALSO,

3 BUT --

4 THE COURT: SO I WANT TO SEE IF THERE IS

5 A WAY TO GET THIS HAPPENING --

6 MR. WOODWARD: WE APPRECIATE YOUR

7 REFERENCE.

8 THE COURT: -- SOONER RATHER THAN LATER.

9 DOES THAT MAKE SENSE? I WILL DO -- AND MAYBE JUST BY

10 THE GOVERNMENT TELLING THEM I AM INQUIRING ABOUT THIS,

11 IT MAY MAKE THINGS HAPPEN. BUT IF NOT, WE WILL HAVE TO

12 FIGURE OUT ANOTHER WAY. SO THAT IS WHY I WANTED TO -- I

13 AM SORRY TO BRING YOU ALL IN ON A -- BUT I THOUGHT IT

14 WOULD BE BETTER FOR US TO MEET FACE-TO-FACE AND SORT OF

15 FIGURE OUT WHERE WE ARE.

16 SO THE MINUTE YOU GET OUT OF THE SHU,

17 THOUGH, YOUR FIRST CALL NEEDS TO BE TO YOUR LAWYER

18 LETTING HIM KNOW YOU ARE OUT OF THE SHU.

19 THE DEFENDANT: ABSOLUTELY, YOUR HONOR.

20 THE COURT: I DON'T KNOW IF YOU HAVE

21 MINUTES OR NOT.

22 THE DEFENDANT: YES, BECAUSE I CAN ONLY

23 MAKE TWO PHONE CALLS A MONTH.

24 THE COURT: SO YOU HAVE PLENTY --

25 THE DEFENDANT: THAT'S ONE OF THE REASONS

1 WHY I WOULD LIKE TO GET OUT OF THE SHU, SO I CAN CALL MY
2 FAMILY AND MY KIDS.

3 THE COURT: RIGHT. WELL, NO, YOU HAVE
4 BEEN IN THE SHU A LONG TIME. BUT DON'T GET INTO ANY
5 PROBLEMS.

6 THE DEFENDANT: NO, AND I HAVE NOT BEEN.
7 I THINK THAT'S WHY IT LOOKS GOOD THAT I WILL BE LEAVING
8 SOON.

9 THE COURT: OKAY. ALL RIGHT. WELL,
10 THEN, I AM GOING TO STAY ON HOLD UNTIL I HEAR FROM YOU
11 ALL, OKAY? BUT HOPEFULLY IN THE NEXT -- I KNOW IT MAY
12 BE DIFFICULT ON A FRIDAY TO GET SOMEBODY OVER THERE, BUT
13 BY THE MIDDLE OF NEXT WEEK HOPEFULLY I CAN HAVE A STATUS
14 UPDATE ON THIS. DOES THAT WORK?

15 MR. GAURI: YES, YOUR HONOR.

16 THE COURT: AND, YOU KNOW, SOMETIMES THE
17 FBI HAS WAYS OF MAKING CALLS OVER THERE, TOO. MAYBE --
18 DO YOU STILL HAVE -- I KNOW ALLEN GONZALES, HE'S NOT
19 THERE ANY MORE. DID SOMEBODY TAKE HIS PLACE?

20 MR. GAURI: I THINK HE MAY HAVE RETIRED.

21 THE COURT: HE RETIRED, AND WHO WAS THE
22 OTHER -- THERE WAS ANOTHER PERSON. I CAN'T BELIEVE --
23 THE NAME IS SLIPPING.

24 MR. GAURI: YEAH, I THINK --

25 THE COURT: THERE SHOULD BE SOMEBODY WHO

1 HAS A CONTACT OVER THERE THAT THEY MIGHT BE ABLE TO ALSO
2 INQUIRE IN TERMS OF THAT.

3 MR. GAURI: YES, YOUR HONOR.

4 THE COURT: LET'S SEE WHAT WE CAN DO, ALL
5 RIGHT?

6 MR. GAURI: YES, YOUR HONOR.

7 THE COURT: THANK YOU, EVERYBODY. HAVE A
8 NICE WEEKEND. SEE YOU SOON. GOOD LUCK.

9 (COURT ADJOURNED.)

10

11 I CERTIFY THAT THE FOREGOING IS A CORRECT
12 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14 December 22, 2021

15 DATE

Lynn Gligor
OFFICIAL COURT REPORTER

16 LYNN GLIGOR, RMR

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